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Date: December 12, 2008/Jessica Sexton/
Jessica Sexton**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of:

Applicant(s): Lili Cheng, *et al.*

Serial No: 10/758,359

Filing Date: January 15, 2004

Examiner: John M. Heffington

Art Unit: 2109

Title: RICH PROFILE COMMUNICATION WITH NOTIFICATIONS

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Appellants' representative submits this brief in connection with an appeal of the above-identified patent application. Payment via credit card is submitted herewith in connection with all fees due regarding this appeal brief. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [MSFTP499US].

I. Real Party in Interest (37 C.F.R. §41.37(c)(1)(i))

The real party in interest in the present appeal is Microsoft Corporation, the assignee of the present application.

II. Related Appeals and Interferences (37 C.F.R. §41.37(c)(1)(ii))

Appellants, appellants' legal representative, and/or the assignee of the present application are not aware of any appeals or interferences which may be related to, will directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims (37 C.F.R. §41.37(c)(1)(iii))

Claims 1-6, 8, 9, 11, 12, 27-31 and 38 stand rejected by the Examiner. The rejection of claims 1-6, 8, 9, 11, 12, 27-31 and 38 is being appealed. Claims 7 and 10 have been cancelled. Claims 13-26 and 32-37 have been withdrawn.

IV. Status of Amendments (37 C.F.R. §41.37(c)(1)(iv))

Claim 40 was renumbered to claim 38 subsequent to the Final Office Action dated April May 14, 2008. This amendment was entered.

V. Summary of Claimed Subject Matter (37 C.F.R. §41.37(c)(1)(v))**A. Independent Claim 1**

Independent claim 1 recites a system embodied on computer readable storage medium that facilitates notifications, comprising:

a state component that receives information relating to a state of at least one entity, wherein an entity is an individual or group of individuals; and (*See specification e.g.*, page 5, lines 15-18; page 5, lines 30-31)

a notifications component that dynamically renders at least one graphical indicia representative of the entity's state to at least one user, the notification component determines graphical indicia to render based upon a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state. (*See specification e.g.*, page 5, lines 20-21; page 5, lines 27-29)

B. Claim 2

Claim 2 recites the system of claim 1, the notification component renders graphical indicia as a function of the at least one user's device's capability. (*See e.g.*, page 9, line 29 to page 10, line 1)

C. Claim 5

Claim 5 recites the system of claim 1, the notification component dynamically renders annotations or comments as a function of the entity's state, wherein the entity inputted annotations or comments for each entity state. (*See specification e.g.*, page 6, lines 16-19)

D. Claim 8

Claim 8 recites the system of claim 1, the entity defines the order in which users will receive the graphical indicia representative of the entity's state. (*See specification e.g.*, page 13, line 29 to page 14, line 2)

E. Claim 11

Claim 11 recites the system of claim 1, the entity defines a plurality of sets of graphical indicia representing the entity's states, each set comprises at least one graphical indicia that is different for a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user. (*See specification e.g.*, page 6, lines 20-22; page 7, lines 7-10; page 16, lines 27-28)

F. Independent Claim 27

Independent claim 27 recites a method of facilitating message notifications, comprising: receiving state information associated with a state of at least one entity, wherein an entity is an individual or group of individuals; (*See specification e.g.*, page 5, lines 15-18; page 5, lines 30-31)

dynamically rendering at least one graphical indicia representative of the state based upon cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state; and (*See specification e.g.*, page 5, lines 20-21; page 5, lines 27-29)

presenting the at least one graphical indicia to at least one user (*See specification e.g.*, page 6, line 5; page 9, lines 12-14)

G. Claim 29

Claim 29 recites the system of claim 1, further comprising providing multiple tiles of the at least one graphical indicia for a particular state, wherein each tile differs in part according to a user that the at least graphical indicia will be presented. (*See specification e.g.*, page 6, lines 20-22; page 7, lines 7-10; page 16, lines 27-28)

H. Claim 30

Claim 30 recites the system of claim 1, further comprising the user presented a plurality of graphical indicia representative of states of a plurality of entities, the user ordering display of the graphical indicia according to priority of the entities. (*See specification e.g.*, page 15, lines 2-8)

I. Claim 31

Claim 31 recites the system of claim 1, further comprising automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities. (*See specification e.g.*, page 15, line 26 to page 16, line 6)

J. Independent Claim 38

Independent claim 38 recites A system embodied on computer readable storage medium that facilitates notifications, comprising:

means for receiving information relating to a state of at least one entity, wherein an entity is an individual or group of individuals; (*See specification e.g.*, page 5, lines 15-18; page 5, lines 30-31)

means for dynamically rendering at least one graphical indicia representative of the entity's state to at least one user, the notification component determines graphical indicia to render based upon a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at

least one user of rendering graphical indicia that correctly represents the entity's state; and (See *specification e.g.*, page 5, lines 20-21; page 5, lines 27-29)

means for the at least one entity to define a plurality of sets of graphical indicia representing the entity's states, each set comprises at least one graphical indicia that is different for a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user. (See *specification e.g.*, page 6, lines 20-22; page 7, lines 7-10; page 16, lines 27-28)

VI. Grounds of Rejection to be Reviewed (37 C.F.R. §41.37(c)(1)(vi))

A. Whether claims 1-6, 8, 9, 11, 12, 27-31, and 38 are unpatentable under 35 U.S.C. §103(a) over Yoakum, *et al.* (US 7,139,797 B1).

VII. Argument (37 C.F.R. §41.37(c)(1)(vii))

A. Rejection of Claims 1-6, 8, 9, 11, 12, 27-31, and 38 Under 35 U.S.C. §103(a)

Claims 1-6, 8, 9, 11, 12, 27-31, and 38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Yoakum, *et al.* (US 7,139,797 B1). This rejection should be withdrawn for at least the following reason. Yoakum *et al.* does not teach or suggest all the limitations of the subject claims.

A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. See *KSR v. Teleflex*, 550 U.S. ___, 127 S. Ct. 1727 (2007) citing *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1, 36 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “guard against slipping into the use of hindsight”) (quoting *Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F. 2d 406, 412 (CA6 1964))).

The subject claims relates to presenting graphical indicia representative of a user's status. In one aspect, costs associated with rendering an incorrect image versus the benefit of rendering an correct image can be analyzed in making decisions regarding dynamically rendering the graphical indicia. For example, the system can infer that user's status and select a graphical indicia representative of the status to render. However, if the image incorrectly represents the

user's actual status, other users who rely on this indicator of status may take incorrect action. If the user is in a meeting and the indicia indicates that the user is at lunch, another user may decide to call the user, thereby, interrupting the meeting. In particular, independent claim 1 recites *a state component that receives information relating to a state of at least one entity, wherein an entity is an individual or group of individuals; and a notifications component that dynamically renders at least one graphical indicia representative of the entity's state to at least one user, the notification component employs a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state.*

Contrary to assertions in the Office Action, Yoakum *et al.* does not teach or suggest the aforementioned novel features as recited in the subject claims. The Office Action states that Yoakum *et al.* does not disclose a utility component that factors cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state, but asserts that it would be obvious based upon the teaching of the cited reference. Applicants' representative respectfully disagrees with this assertion. The Office Action dated May 14, 2008 asserts that a cost benefit analysis is inherent in the estimate of presence information of the user and that there are limitless variations in profile and rule construction. On the contrary, the cited reference fails to discuss any cost/benefit analysis. Yoakum *et al.* discloses a system that monitors user activity and location information to determine the user's current status and the devices that may be available to them at the location. The system then employs user defined rules that produce a prioritized list of communication devices that can be employed to communicate with the user. (See Yoakum *et al.* *e.g.*, column 3, lines 40-44, column 11, line 59-column 12, line 53) As such, the list is based upon user specified rules and not any type of cost-benefit analysis of presentation of graphical indicia to the user of another user's state. The cited reference does not disclose any type of cost versus benefit analysis in determining the priority of the communication methods. Yoakum *et al.* merely states that current and past device state information may be used in determining presence information and also fails to suggest that rules are constructed by the system based upon any type of cost-benefit analysis. Yoakum *et al.* provides a determination of the user's presence and relies upon user defined rules to determine which status indicia to present. In addition, the Office

Action asserts that when a user formulates rules they calculate a cost-benefit in determining which users to allow contacting them. On the contrary, Yoakum *et al.* does not make any suggestion within the specification along these lines. The cited reference does not make any suggestions regarding a cost-benefit analysis in determining status indicia to present. Moreover, the claim specifically recites that a *utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state*. This clearly indicates the cost/benefits are associated with the user receiving the status indication of the entity. The user defining rules for themselves regarding how the user should be contacted does not imply any inherent analysis regarding cost or benefits to another user related to receiving an correct/incorrect current status indication of the user defining the rules. These are two distinct concepts that are not related in the manner asserted in the Advisory Action dated July 29, 2008; one is defining how a user wants to be contacted and the other relating to a status indicator of one user provided to another user. Yoakum *et al.* is silent regarding any type of analysis related to cost of rendering incorrect status indicia to a user versus the benefit of rendering correct status indicia to a user. The cited reference determines the presence information and relies on the user rules to display the contacting method regardless of whether the presence information is correct or incorrect. As such, Yoakum *et al.* does not teach all of the elements of claim 1.

Independent claim 27 recites *receiving state information associated with a state of at least one entity, wherein an entity is an individual or group of individuals; dynamically rendering at least one graphical indicia representative of the state based upon cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state; and presenting the at least one graphical indicia to a user*. As discussed above, Yoakum *et al.* does not disclose any type of cost benefit analysis and is silent regarding cost of rendering graphical indicia to a user that incorrectly represents the entity's state versus benefit of rendering graphical indicia to a user that correctly represents the entity's state. As such, the cited reference fails to make obvious all elements of the subject claim.

Independent claim 38 recites *means for dynamically rendering at least one graphical indicia representative of the entity's state to at least one user, the notification component*

determines graphical indicia to render based upon a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state; means for the at least one entity to define a plurality of sets of graphical indicia representing the entity's states, each set comprises at least one graphical indicia that is different for a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user. As noted supra, Yoakum *et al.* does not disclose any type of cost benefit analysis and is silent regarding cost of rendering graphical indicia to a user that incorrectly represents the entity's state versus benefit of rendering graphical indicia to a user that correctly represents the entity's state. Additionally, the subject claim discloses that the entity can define differing sets of graphical indicia, where for the same state a different graphical indicia can be assigned in each set. This allows for the entity to have different sets of graphical indicia for different users. For example, a set can be defined for co-workers and a different set can be defined for friends. The Office Action asserts that different communication methods can be presented to different users under the same circumstances based upon the rules. However, the rules merely provide for a user to be presented with different state information based upon the presence information. In this respect different user are provided with a different presence state of the user. The subject claim discloses that for the same presence state, differing graphical indicia will be presented to different user that each represents the same state. Yoakum *et al.* does not disclose that differing graphical indicia can be defined for the same state. As such, Yoakum *et al.* does not teach this feature of the subject claim.

Moreover, claim 2 recites *the notification component renders graphical indicia as a function of the at least one user's device's capability*. Column 10, lines 54-67 and column 11, line 25 are cited as teaching this feature. However, this section merely states that a presence application is implemented on a subscriber device and provides a prioritized list of methods to contact a user. The section does not disclose any information regarding the capabilities of devices of the user that will receive the status and render the graphical entity status indicia based upon the user's device capabilities. As such, Yoakum *et al.* does not teach this feature of the subject claim.

Claim 5 recites *the notification component dynamically renders annotations or comments as a function of the entity's state, wherein the entity inputted annotations or comments for each entity state*. Column 10, lines 40-47 is cited as teaching this feature. The cited section discloses a user defined profile which defines user devices and rules. This section does not disclose that a user can enter annotations or comments for each state and that the notification component will display them as a function of the user's state. Hence, the cited reference does not teach the notification component dynamically renders annotations or comments as a function of the entity's state, wherein the entity inputted annotations or comments for each entity state.

In addition, claim 8 recites *the entity defines the order in which users will receive the graphical indicia representative of the entity's state*. The subject claim allows the entity to determine the order in which users will receive the graphical status indicia. This allows the entity to let higher priority users to be notified prior to lower priority users. Column 4, lines 44-52 is cited as teaching this feature. However, this section merely makes a general statement that a profile can allow a user to control delivery and user of presence information. All discussions of the profile in the reference relate to rules that determine which state information will be presented to users. The cited reference does not provide any suggestion that a user specifies the order in which users will receive status information. Yoakum *et al.* is silent regarding this feature of the subject claim.

Claim 11 recites *the entity defines a plurality of sets of graphical indicia representing the entity's states, each set comprises at least one graphical indicia that is different for a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user*. The subject claim discloses that the entity can define differing sets of graphical indicia, where for the same state a different graphical indicia can be assigned in each set. This allows for the entity to have different set of graphical indicia for different users. For example, a professional appearing set of indicia can be defined for co-workers and a more casual appearing set of indicia can be defined for friends. As discussed above with respect to claim 38, Yoakum *et al.* does not teach this feature of the subject claim.

Claim 29 recites *providing multiple tiles of the at least one graphical indicia for a particular state, wherein each tile differs in part according to a user that the at least graphical*

indicia will be presented. The Office Action cites column 6, lines 36-52 and column 11, lines 11-25 as teaching this feature. These sections merely refer to the profile defining rules for determining the state information that is presented to users. The sections are silent regarding having differing graphical indicia for the same state based upon the user receiving the state information. Thus, Yoakum *et al.* does not teach this feature of the subject claim.

Claim 30 recites *the user presented a plurality of graphical indicia representative of states of a plurality of entities, the user ordering display of the graphical indicia according to priority of the entities.* The subject claim discloses that a user who is presented graphical indicia representing stated of multiple entities can defined the order of display of the graphical indicia to represent their view of the priority of the entities. For example, the user may decide to put the graphical indicia of the higher priority entities before lower priority entities. The cited sections, column 6, lines 28-31 and column 10, lines 23-26 merely states that a user can identify users for which they would like to receive presence information. The sections are silent regarding any type of priority associated with the received presence information. Yoakum *et al.* is silent regarding this feature of the subject claim.

Claim 31 recites *automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities.* As discussed above, Yoakum *et al.* does not teach display ordering of graphical indicia. The Office Action cites column 6, lines 28-31, column 10, lines 23-26 and column 13, lines 33-36 as teaching this feature. On the contrary, these sections state that presence information can be filtered based upon a user profile. The sections are silent regarding any type of ordering based upon frequency of communication. As such, the cited reference also fails to disclose automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities.

In view of the foregoing, applicants' representative respectfully submits that Yoakum, *et al.* fails to teach or suggest all limitations of independent claims 1, 27, and 38 (and claims 2-6, 8, 9, 11, 12, 28-31 that depend there from), and thus fails to make obvious the subject claims. Accordingly, reversal of this rejection is respectfully requested.

C. Conclusion

For at least the above reasons, the claims currently under consideration are believed to be patentable over the cited references. Accordingly, it is respectfully requested that the rejections of claims 1-6, 8, 9, 11, 12, 27-31 and 38 be reversed.

If any additional fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP499US].

Respectfully submitted,
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VIII. Claims Appendix (37 C.F.R. §41.37(c)(1)(viii))

1. A system embodied on computer readable storage medium that facilitates notifications, comprising:

a state component that receives information relating to a state of at least one entity, wherein an entity is an individual or group of individuals; and

a notifications component that dynamically renders at least one graphical indicia representative of the entity's state to at least one user, the notification component determines graphical indicia to render based upon a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state.

2. The system of claim 1, the notification component renders graphical indicia as a function of the at least one user's device's capability.

3. The system of claim 1, the graphical indicia changes based upon the length of time the entity is in the same state.

4. The system of claim 1, further comprising an inference component that infers the state of the entity based on extrinsic data.

5. The system of claim 1, the notification component dynamically renders annotations or comments as a function of the entity's state, wherein the entity inputted annotations or comments for each entity state.

6. The system of claim 1, the user specifies one or more graphical indicia that each correlates to a context of the entity's state.

7. (Cancelled)

8. The system of claim 1, the entity defines the order in which users will receive the graphical indicia representative of the entity's state.

9. The system of claim 1, the notifications component is a hardware component that renders indicia as a function of device capabilities.

10. (Cancelled).

11. The system of claim 1, the entity defines a plurality of sets of graphical indicia representing the entity's states, each set comprises at least one graphical indicia that is different for a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user.

12. The system of claim 1, the notification component is used to facilitate dynamic rendering of the graphical indicia for at least one of instant messaging, e-mail, and telephone interaction.

13. (Withdrawn) A system that facilitates rich profile messaging, comprising:
a state component that receives information relating to a state of at least one entity, wherein an entity is an individual or group of individuals;
a visualization component that presents at least one profile associated with the at least one entity;
a profile management component that facilitates management of the at least one profile; and
a notifications component that dynamically renders at least one user selected graphical indicia representative of a state of the at least one entity.

14. (Withdrawn) The system of claim 13, the visualization component facilitates the presentation of the at least one profile in a thumbnail view on the periphery of the display.

15. (Withdrawn) The system of claim 13, the visualization component facilitates the presentation of data representative of notification, time passage, and state indicators.

16. (Withdrawn) The system of claim 13, further comprising a profile editing component that facilitates entry of new status data by an owner of the at least one profile by at least one of creating and annotating a picture, and posting an audio and/or video file.

17. (Withdrawn) The system of claim 13, further comprising a profile editing component that facilitates a user other than an owner of the at least one profile to provide feedback about the at least one profile to the owner by at least one of entering text, audio data, a comment, and annotations to the at least one profile.

18. (Withdrawn) The system of claim 13, further comprising a profile management component that facilitates allowing an owner of the at least one profile to provide access to the at least one profile by at least one other person.

19. (Withdrawn) The system of claim 13, the profile management component facilitates allowing a user to at least one of subscribe to another profile, add a profile, and remove a profile.

20. (Withdrawn) The system of claim 13, the profile management component facilitates the caching of images and usage statistical data.

21. (Withdrawn) The system of claim 13, further comprising a communications component that facilitates communication with another rich profile system via at least one of a web communication mechanism, web broadcasting, peer-to-peer communications, a messenger-type service, e-mail, and telephone.

22. (Withdrawn) The system of claim 13, further comprising a communications component that facilitates the posting and propagation of profile changes in real-time to another system that subscribes to the at least one profile.

23. (Withdrawn) The system of claim 13, the graphical indicium is rendered as function of one of a type of recipient and type of device.

24. (Withdrawn) The system of claim 13, the profile management component facilitates at least one of generation, migration, and sharing of the at least one profile.

25. (Withdrawn) The system of claim 13, the personalized graphical indicia includes at least one of animation, a picture, a music file, text, and a slide show of text and/or images.

26. (Withdrawn) The system of claim 13 implemented in accordance with at least one of an instant messaging technology, a web log system, an RSS feed technology, and peer-to-peer topology.

27. A method of facilitating message notifications, comprising:
receiving state information associated with a state of at least one entity, wherein an entity is an individual or group of individuals;
dynamically rendering at least one graphical indicia representative of the state based upon cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state; and
presenting the at least one graphical indicia to at least one user.

28. The method of claim 27, further comprising ranking the personalized graphical indicia according to at least one of a number of comments, a number of accesses, and popularity of use.

29. The method of claim 27, further comprising providing multiple tiles of the at least one graphical indicia for a particular state, wherein each tile differs in part according to a user that the at least graphical indicia will be presented.

30. The method of claim 27, further comprising the user presented a plurality of graphical indicia representative of states of a plurality of entities, the user ordering display of the graphical indicia according to priority of the entities.

31. The method of claim 30, further comprising automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities.

32. (Withdrawn) A computer-readable medium having computer-executable instructions for performing a method of facilitating message notifications, the method comprising:

- receiving state information associated with a state of at least one entity, wherein an entity is an individual or group of individuals;
- generating at least one profile associated with the at least one entity;
- updating the at least one profile in real-time based upon the state;
- dynamically rendering at least one user selected graphical indicia representative of the state to the at least one entity and to the subscriber.

33. (Withdrawn) The method of claim 32, further comprising requesting comments related to the at least one profile from the subscriber.

34. (Withdrawn) The method of claim 32, further comprising accessing a subscriber profile of the subscriber and editing the subscriber profile.

35. (Withdrawn) A system that facilitates message notifications, comprising:

- means for receiving state information associated with a state of at least one entity, wherein an entity is an individual or group of individuals;
- means for dynamically rendering at least one user selected graphical indicia representative of the state;
- means for notifying a subscriber of the rendered graphical indicia; and
- means for presenting the at least one graphical indicia to a user.

36. (Withdrawn) The system of claim 35, the means for notifying includes a support module means in the form of one of a web server to exchange files and a web service to exchange profile data.

37. (Withdrawn) The system of claim 35, further comprising means for caching content and statistical data.

38. A system embodied on computer readable storage medium that facilitates notifications, comprising:

means for receiving information relating to a state of at least one entity, wherein an entity is an individual or group of individuals;

means for dynamically rendering at least one graphical indicia representative of the entity's state to at least one user, the notification component determines graphical indicia to render based upon a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state; and

means for the at least one entity to define a plurality of sets of graphical indicia representing the entity's states, each set comprises at least one graphical indicia that is different for a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user.

IX. Evidence Appendix (37 C.F.R. §41.37(c)(1)(ix))

None.

X. Related Proceedings Appendix (37 C.F.R. §41.37(c)(1)(x))

None.